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5 UNITED STATES DISTRICT COURT  
6 EASTERN DISTRICT OF WASHINGTON

7  
8 JEREMIAH A. SMITH,

9 Plaintiff,

10 v.

11 C/O MRS. EISNER,

12 Defendant.

2:16-CV-00299-SAB

**ORDER ADOPTING REPORT  
AND RECOMMENDATION  
AND DISMISSING FIRST  
AMENDED COMPLAINT**

**1915(g)**

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15 Magistrate Judge John Rodgers filed a Report and Recommendation on  
16 March 15, 2017, recommending Mr. Smith's First Amended Complaint be  
17 dismissed without prejudice, ECF No. 12. Plaintiff, a prisoner at the Spokane  
18 County Jail, is proceeding *pro se* and *in forma pauperis*; Defendant has not been  
19 served. Plaintiff has not filed any objections to the Report and Recommendation.

20 Pursuant to 28 U.S.C. §§ 1915(e)(2) and 1915A(b)(1), Magistrate  
21 Judge Rodgers reviewed Plaintiff's First Amended Complaint, found that it failed  
22 to state a claim upon which relief may be granted, and granted Plaintiff a second  
23 opportunity to amend. *See Lopez v. Smith*, 203 F.3d 1122, 1126 (9th Cir. 2000)  
24 (noting that the Prison Litigation Reform Act of 1995 contains several provisions  
25 that require district courts to screen lawsuits filed by prisoners and to dismiss those  
26 suits *sua sponte* under certain circumstances). Although granted the opportunity to  
27 so do, Plaintiff did not amend as directed and he has filed nothing further in this  
28 action.

**ORDER ADOPTING REPORT AND RECOMMENDATION AND  
DISMISSING FIRST AMENDED COMPLAINT -- 1**

1           **Accordingly, IT IS HEREBY ORDERED:**

2           1.     The Court **ADOPTS** the Report and Recommendation, ECF No. 12,  
3 in its entirety.

4           2.     The First Amended Complaint is **DISMISSED without prejudice** for  
5 failure to state a claim upon which relief may be granted under 28 U.S.C. §§  
6 1915(e)(2) and 1915A(b)(1).

7           3.     Pursuant to 28 U.S.C. § 1915(g), a prisoner who brings three or more  
8 civil actions or appeals which are dismissed as frivolous or for failure to state a  
9 claim will be precluded from bringing any other civil action or appeal *in forma*  
10 *pauperis* “unless the prisoner is under imminent danger of serious physical injury.”  
11 28 U.S.C. § 1915(g). **Plaintiff is advised to read the statutory provisions under**  
12 **28 U.S.C. § 1915. This dismissal of Plaintiff’s First Amended Complaint may**  
13 **count as one of the three dismissals allowed by 28 U.S.C. § 1915(g) and may**  
14 **adversely affect his ability to file future claims.**

15           **IT IS SO ORDERED.** The Clerk of Court is directed **ENTER** this Order,  
16 **ENTER** judgment, **FORWARD** copies to Plaintiff at his last known address and  
17 **CLOSE** the file. The Clerk of Court is further directed to **FORWARD** a copy of  
18 this Order to the Office of the Attorney General of Washington, Corrections  
19 Division. The Court certifies any appeal of this dismissal would not be taken in  
20 good faith.

21           **DATED** this 4th day of May 2017.



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A handwritten signature in blue ink, reading "Stanley A. Bastian", is written over a horizontal line.

27           Stanley A. Bastian  
28           United States District Judge